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To:

Cc:

Subject: FW: Lien Priority Question

Hi

As noted below, under the facts provided it appears that the bank would have a superpriority under section 6323(b)(10), for deposit-secured loans. There is not much out there on 6323(b)(10) (a Lexis search pulled up only 3 cases), and I have not come across anything specifically addressing UCC 9-312 in this context, but the below excerpt from the GL training materials is useful:

Article 9 of the UCC allows a bank to obtain a security interest in a deposit account. Specifically, section 9-109 of Article 9 allows a security interest to be created in personal property. Section 9-109(d)(13), however, excludes consumer loans from the scope of Article 9, so a security interest may be created in only business loans. Section 9-314(a) provides that a security interest in a deposit account may be perfected by control. Under section 9-104(a)(1), a bank automatically has control when the bank maintains the deposit account. Section 9-104(b) provides that the bank still maintains control even if the depositor is allowed to withdraw funds from the account. There is no requirement that the bank file a UCC statement with the state. In effect, in most situations, the bank will automatically and secretly have perfected a security interest in the depositor's account. A bank's claim to a section 6323(b)(10) superpriority, however, is not a defense to a levy. Rev. Rul. 2006-42, 2006-2 C.B. 337.

The Rev Rul cited also provides that we will generally release a levy once a bank establishes its superpriority interest. See also IRS CCA 200849001 (regarding application of 6323(b)(10) to taxpayer checking accounts).

From the facts provided, I don't see an argument here that there are any grounds to dispute the bank's superpriority claim unless the bank did not loan a "fixed and determinable sum." I have never seen a case where we have disputed a bank's security interest in a deposit account based upon lack of perfection by control.

Please let me know if I can be of further assistance.